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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,471	10/11/2001	James L. Jason JR.	10559-504001 / P11796	9923
20985	7590	08/22/2006	EXAMINER	
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			DIVECHA, KAMAL B	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,471

Applicant(s)

JASON ET AL.

Examiner

KAMAL B. DIVECHA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-14, 19-21, 23, 24 and 27-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-14, 19-21, 23-24, 27-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Arguments

Claims 1-3, 6-14, 19-21, 23-24, 27-46 are pending in this application.

Applicant's arguments with respect to claims 1-3, 6-14, 19-21, 23-24, 27-46 has been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-3, 6-14, 19-21, 23-24, 27-46 are rejected under 35 U.S.C. 102(e) as anticipated by Chen et al. (hereinafter Chen, US 2002/0103916 A1).

As per claim 1, Chen explicitly discloses a method comprising:

first monitoring network traffic, and generating an average that relates to traffic of a specified type (pg. 1 [0007-0008], pg. 2 [0027], fig. 6 item #32a, fig. 4 item #42, 44);

comparing current network traffic to said average, at first and second points of a network, and using said comparing to generate information about unwanted communications passing through the first and second points, the unwanted communications being of a type to reduce the ability of the target device to respond to other communications (pg. 1 [0006-0007], [0009], fig. 9 item #84, 86, 88, 89 and 90); and

based on said comparing analyzing the information generated at the first and second points to identify which of the points first carried the unwanted communications (fig. 4 item #46, 50, 52, fig. 6, fig. 9, pg. 2 [0027-0028], pg. 3 [0035-0038], pg. 4 [0047-0050]).

As per claim 2, Chen discloses the process of detecting the direction of the unwanted communications (pg. 3 [0037]).

As per claim 3, Chen discloses the process of identifying the target device (pg. 3 [0037]).

As per claim 6, Chen discloses the process of correlating communications request messages with acknowledgement messages (pg. 1 [0006-0009], pg. 3 [0035], [0037]).

As per claim 7, Chen discloses the process of communicating information about the unwanted communications to brokers (pg. 1 [0007, 0009], pg. 2-3 [0031]).

As per claim 8, Chen discloses the process of communicating information about the unwanted communications among brokers (pg. 2-3 [0031], pg. 4 [0043]).

As per claim 9, Chen discloses the process of blocking a portion of communications passing through the point through which the unwanted communications originated (pg. 2 [0028], pg. 2-3 [0031], pg. 4 [0043]).

As per claim 10, Chen discloses the process of blocking a portion of communication request messages passing through the point through which the unwanted communications originated (pg. 2-3 [0003], pg. 4 [0043], [0047]).

As per claim 11, Chen discloses the process wherein the target device comprises a web server (pg. 2 [0025], pg. 5 [0060], fig. 2-3).

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As per claim 21, Chen discloses the system wherein the communications analyzer includes an interface monitor corresponding to each interface device and a communications link between the interface monitors (pg. 2-3 [0030-0031], fig. 1-3).

As per claim 27, Chen discloses the process in which the communications monitor also includes a statistics analyzer for statistically analyzing the messages passing through the plurality of agents (pg. 3 [0035], fig. 4 item #44, 50, fig. 6, fig. 9).

As per claim 35, Chen discloses the process wherein said network traffic of a specified type is a number of SYN requests (pg. 1 [0006-0011], fig. 4, fig. 10).

As per claim 36, Chen discloses the process wherein said average is a moving average related to the specified type of network traffic (pg. 5 [0058-0061]).

As per claims 12-14, 19-20, 23-24, 28-34, 37-46, they do not teach or further define over the limitations in claims 1-3, 6-11, 21, 27, 35, 36. Therefore claims 12-14, 19-20, 23-24, 28-34, 37-46 are rejected for the same reasons as set forth in claims 1-3, 6-11, 21, 27, 35, 36.

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Sharp et al., US 2002/0131366 A1: Traffic Management Control.
- b. Belissent, US 6,789,203 B1: Preventing DoS Attack.
- c. Conklin et al., US 5,991,881: Network Surveillance system.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

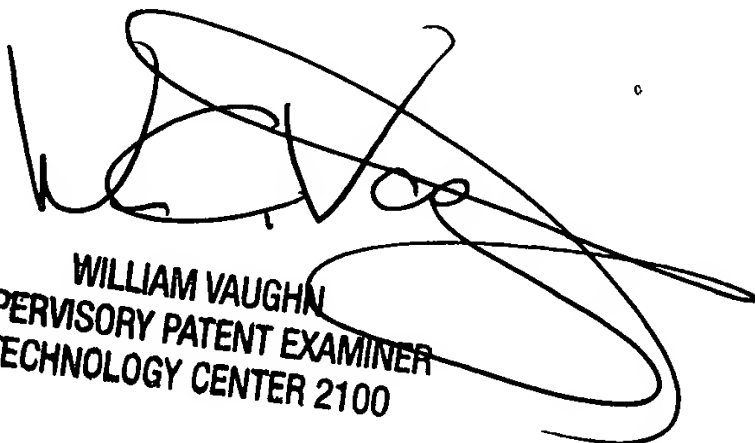
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kamal Divecha
Art Unit 2151
August 17, 2006.



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